No. 87-1185

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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

UNITED MINE WORKERS OF AMERICA
1974 BENEFIT PLAN AND TRUST,
Petitioner,

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA,
AND HERSCHEL HENSON,
Respondents.

UNITED MINE WORKERS OF AMERICA
1974 BENEFIT PLAN AND TRUST,
Petitioner,

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA;
LOCAL UNION 5821;
LOCAL UNION 6046, UNITED MINE WORKERS OF AMERICA;
GARLAND WALKUP, RETIREE;
MADELINE R. THOMAS, WIDOW;
JOSEPH M. HANSHEW, DISABLED RETIREE;
JOHN DOE; MARY DOE,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF OF BITUMINOUS COAL OPERATORS' ASSOCIATION, INC. AS AMICUS CURIAE IN SUPPORT OF THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST'S PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

SUBJECT INDEX

	Page
INTRODUCTION	2
INTEREST OF AMICUS CURIAE	2
BACKGROUND	4
SUMMARY OF ARGUMENT	6
ARGUMENT	9
THE WRIT SHOULD BE GRANTED AND THE FOURTH CIRCUIT'S DECISION REVERSED TO PREVENT OTHER COURTS FROM RELYING THEREON IN MEASURING COLLECTIVELY BARGAINED COMPROMISES BY JUDICIALLY IMPOSED STANDARDS OF REASONABLENESS	9
THE WRIT SHOULD BE GRANTED BECAUSE THE FOURTH CIRCUIT'S OPINION DOES VIOLENCE TO BOTH THE PLAIN LANGAUGE AND THE CONGRESSIONAL INTENT UNDERLYING THE EMPLOYEE RETIREMENT INCOME SECURITY ACT	12
THE WRIT SHOULD BE GRANTED SO THAT THIS COURT CAN EMBRACE OR REJECT THE STANDARD OF REVIEW ADOPTED BY ELEVEN CIRCUIT COURTS OF APPEALS BUT SHUNNED BY THE FOURTH CIRCUIT IN THIS CASE	14
CONCLUSION	18

TABLE OF AUTHORITIES

CASES CITED	Page
Aitken v. I.P. & G.C.U.-Employer Retirement Fund, 604 F.2d 1261 (9th Cir. 1979)	15
Bayles v. Central States, Southeast and Southwest Areas Pension Fund, 602 F.2d 97 (5th Cir. 1979)	15
Bowen v. United States Postal Service, 459 U.S. 212 (1983)	10
Bruch v. Firestone Tire & Rubber Co., 828 F.2d 134 (3d Cir. 1987)	16
Carbon Fuel Co. v. Mine Workers, 444 U.S. 212 (1979)	10, 11
Carter v. Central States, Southeast and Southwest Areas Pension Fund, 656 F.2d 575 (10th Cir. 1981)	15
Central States, Southeast and Southwest Areas Pension Fund v. Central Transp. Inc., 472 U.S. 559 (1985)	12
Central States, Southeast and Southwest Areas Pension Fund v. Central Transp. Inc., 698 F.2d 802 (6th Cir. 1983), *rev'd on other grounds*, 472 U.S. 559 (1985)	15
Cummings by Techmeir v. Briggs & Stratton Retirement Plan, 606 F. Supp. 659 (W.D. Wisc. 1985), *rev'd*, 797 F.2d 383 (7th Cir.), *cert. denied*, 107 S.Ct. 648 (1986)	17
Deak v. Masters, Mates, & Pilots Pension Plan, 821 F.2d 572 (11th Cir. 1987), *cert. denied*, —— U.S. ——, 56 U.S.L.W. 3360 (Jan. 11, 1988)	15
District 2, UMWA v. Helen Mining Co., 762 F.2d 1155 (3d Cir.), *cert. denied*, 474 U.S. 1006 (1985)	16
District 29, United Mine Workers v. Royal Coal, 768 F.2d 588 (4th Cir. 1985)	5
Gaines v. Amalgamated Ins. Fund, 753 F.2d 288 (3d Cir. 1985)	15
H.K. Porter Co., Inc. v. NLRB, 397 U.S. 99 (1970)	11

TABLE OF AUTHORITIES—Continued

Page

Miles v. New York State Teamsters Conf., 698 F.2d 593 (2d Cir.), *cert. denied*, 464 U.S. 829 (1983) 15
Nichols v. Board of Trustees of the Asbestos Workers Local 124 Pension Plan, —— F.2d ——, 1987 WL 21264 (D.C. Cir. Sept. 24, 1987) 15
NLRB v. Amax Coal Co., 453 U.S. 322 (1981) 14
NLRB v. American National Ins. Co., 343 U.S. 395 (1952) 11
NLRB v. Insurance Agents, 361 U.S. 477 (1960) 11
Palino v. Casey, 664 F.2d 854 (1st Cir. 1981) 15
Short v. Central States, Southeast and Southwest Areas, Pension Fund, 729 F.2d 567 (8th Cir. 1984) 15
Teamsters v. Oliver, 358 U.S. 283 (1959) 11
United Mine Workers Health and Retirement Funds v. Robinson, 455 U.S. 562 (1982) ..... *passim*
Van Boxel v. Journal Company Employees' Pension Trust, —— F.2d ——, 1987 WL 26050 (7th Cir. Dec. 26, 1987) 15, 16
Varhola v. Doe, 820 F.2d 809 (6th Cir. 1987) 16
Wardle v. Central States, Southeast and Southwest Areas Pension Fund, 627 F.2d 820 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981) 15
Whip v. Seafarers Vacation Plan, 832 F.2d 853 (4th Cir. 1987) 15

UNITED STATES CODE CITED

Title 29, Section 186(c) 11
Title 29, Section 1102 12
Title 29, Section 1103(a) 12
Title 29, Section 1103(c)(1) 12
Title 29, Section 1104(a)(1) 12
Title 29, Section 1104(a)(1)(D) 12

TABLE OF AUTHORITIES—Continued

ACTS OF CONGRESS CITED Page

Employee Retirement Income Security Act of 1974, Sections 1001-1461 8

Section 402 12
Section 403 12
Section 404(a)(1) 12
Seciton 404(a)(1)(D) 12

Section 302(c) of the Labor Management Relations (Taft-Hartley) Act of 1947, 29 U.S.C. Section 186(c) 11

OTHER AUTHORITIES CITED

13 *Williston on Contracts*, Section 1548 (3d ed. 1970) 10

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INTRODUCTION

The Petitioner and *Amicus Curiae*, the Bituminous Coal Operators' Association, Inc. ("BCOA"), urge this Court to grant the Petition for a Writ of Certiorari. The United States Court of Appeals for the Fourth Circuit has ordered a collectively bargained employee health benefits plan to provide benefits to a large group of individuals who were specifically excluded from coverage under the Plan's negotiated eligibility rules. The decision of the Fourth Circuit in this case threatens the future financial stability of the Petitioner Plan. Further, by conflicting with the explicit language of the Plan, the decision establishes a dangerous and unwarranted precedent for judicial intrusion into the substantive terms of collective bargaining agreements and the administration of trust affairs by plan trustees. By venturing into these matters, the Fourth Circuit's opinion will have a destabilizing influence on collective bargaining within the coal industry, and on the prudent and orderly administration of pension and benefit plans generally.

If the Fourth Circuit's opinion in this case remains unreviewed, any dissatisfied party to a future collective bargaining agreement will be encouraged to file a federal court action in an effort to convince a district judge that it is unreasonable to enforce selected bargained-for provisions. *Amicus Curiae* respectfully submits that this result is not consonant with the prior opinions of this Court and would significantly undermine basic tenets of federal labor policy.

INTERESTS OF AMICUS CURIAE

BCOA is the multiemployer bargaining association representing numerous large and small coal companies in collective bargaining with the United Mine Workers of America ("UMWA"). BCOA negotiates the National Bituminous Coal Wage Agreement ("NBCWA"), the industry-wide contract governing terms and conditions of employment in the bituminous coal industry, and along

with the UMWA, is a settlor of the Petitioner United Mine Workers of America 1974 Benefit Plan and Trust ("1974 Benefit Plan"). Because of its role in the negotiation of national bargaining agreements, both past and present, BCOA is in a position to provide the Court with a more complete understanding of the history of bargaining between labor and management in the coal industry and of the destabilizing effect the Fourth Circuit's decision has had, and will continue to have, on the achievement of labor peace through the negotiation and compromise of the competing interests of the parties.

As this brief goes to print, the parties are in the final stages of ratification for a successor agreement to the 1984 NBCWA. This contract will include amendments to the collectively bargained 1974 Benefit Plan, including some additional funding for retiree benefits for the term of the 1988 agreement. In the past, BCOA member companies have been secure in the knowledge that they could rely on the collectively bargained language of the contract and the plan to define the coverage of the 1974 Benefit Plan and hence as the measure of the financial commitment required of them over the contract's term.

As explained *infra*, however, in the wake of the Fourth Circuit's decision below, the collectively bargained terms of such an agreement are no longer guaranteed the protection this Court has always afforded the hard-fought compromises embodied in labor agreements. These terms, instead, may be rewritten by a district judge to conform to his or her own conception of fairness without reference to the unambiguous language of the contract. Under such a rule of law, contract negotiations become exercises in futility and long-term financial planning becomes difficult or impossible.

For these reasons, BCOA submits that its participation in this proceeding would be beneficial to the Court and is essential to its members. BCOA has received the written consent of the parties to the proceeding below to file

this Brief as *Amicus Curiae* (Copies on file with the Clerk of this Court.).

BACKGROUND

The contractual language at issue in this case has been the center of protracted and intense bargaining between BCOA and the UMWA since 1978. During the 1978 negotiating sessions, BCOA sought the total elimination of the 1974 Benefit Plan, a multiemployer welfare benefit plan created by the 1974 NBCWA. The employers sought to shift financial responsibility for the health benefits provided by that Plan to the individual coal operators. The UMWA, conversely, sought to continue the jointly-funded arrangement then in effect and to secure a funding guarantee from all BCOA-member companies. After an 111-day strike, the parties arrived at a compromise eligibility formula that reposed primary responsibility for health benefits with the individual companies, but continued the 1974 Benefit Plan for the limited purpose of providing benefits only for individuals whose former employers were, in the language of the agreement, "no longer in business."[1]

Because the 1974 Wage Agreement failed to define the term "no longer in business," the Trustees, of necessity, adopted an administrative interpretation of this eligibility threshold. This working definition proved unsatisfactory, so during negotiations for the 1981 NBCWA, the BCOA agreed with the UMWA upon contractual language expressly defining the "no longer in business" term

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[1] The intended role of the 1974 Benefit Plan is truly limited. The single employer plans currently provide benefits to approximately 31,400 retirees. By contrast, the 1974 Benefit Plan serves just over 2,100 legitimate beneficiaries (plus dependents) under its collectively-bargained language. An additional 670 individuals (24 percent of the Plan's beneficiary population) are covered as a result of court injunctions related to this dispute. BCOA projects that unless the Fourth Circuit's decision is overturned, the Plan could soon be required to add at least 1,200 additional unintended beneficiaries to its rolls.

and its relation to the limited role the 1974 Benefit Plan was intended to serve. Specifically, the parties provided that a company was "no longer in business" only if it (1) had ceased receiving income from the production or sale of coal, (2) had ceased employing persons covered by the NBCWA *and* (3) was financially unable, either by itself or through its "successors . . . assigns . . . or [any] related division, subsidiary or parent corporation" to pay the benefits in question, whether the successor or parent was covered by the agreement or not. Appendix to Petition for Writ of Certiorari at p. 74a (hereafter cited as App. at ——). Following the adoption of this language, and throughout the term of the 1981 NBCWA, the Trustees of the Plan consistently enforced the contract's express terms, denying benefits to all workers whose former employer did not meet each element of the contractual definition of "no longer in business."

The UMWA subsequently became dissatisfied with the consequences of the bargain it had made in 1981. Accordingly, in 1984, the UMWA proposed new contract language which would have altered the definition of "no longer in business" to provide for Plan eligibility whenever the subject company (or its successor or parent) was *either* unable *or* had no legal obligation to pay for the benefits. App. at 98a-102a. The UMWA pressed hard for this proposal, insisting on its inclusion in the 1984 NBCWA, until the last bargaining session. It then reluctantly abandoned the proposal, and the 1984 NBCWA retained the narrow eligibility provisions noted above.

Following the 1984 negotiations, the UMWA became even more dissatisfied with the contract it had negotiated with the BCOA. In particular, the decision of the Fourth Circuit in *District 29, United Mine Workers v. Royal Coal*, 768 F.2d 588 (4th Cir. 1985) ("*Royal Coal*"), App. at 42a, caused the union to redouble its efforts to get out from under its bargained-for agreement. In that case, the Court determined that the obligations of the in-

dividual coal companies to fund the disputed health benefits under their individual plans terminated with the expiration of the collective bargaining agreement they had executed.

After *Royal Coal*, the UMWA found itself with limiting contractual language it had been unable to change at the bargaining table and a further limiting Fourth Circuit decision making the individual employer's legal obligation to pay benefits coextensive with the life of its collective bargaining agreement. Having boxed itself in, the UMWA felt compelled to ask a federal judge to change outright the 1984 contract and impose on the 1974 Benefit Plan an obligation it had not assumed.

This is precisely what the Fourth Circuit has done. By agreeing with the UMWA and holding the Plan liable for benefits in situations beyond the contemplation of the contracting parties and in derogation of the express language of the agreement itself, the Court has disrupted a collectively bargained benefit program, and granted to the UMWA contract language it had been unable to win at the bargaining table.

SUMMARY OF ARGUMENT

By invalidating the negotiated health benefit eligibility requirements of the 1974 Benefit Plan, contained in two successive collective bargaining agreements between BCOA and the UMWA, the Fourth Circuit has directly overturned a bargain struck by the parties—a bargain that was lawful, tailored to the needs of the UMWA and the employers, and mindful of the needs of the intended beneficiaries. The 1974 Benefit Plan is a pre-funded plan and, as such, has not received a single employer contribution since the expiration of the 1978 NBCWA. In the absence of additional funding, it is projected that the Plan would soon exhaust its remaining assets, leaving without benefits both those intended for coverage and

those for whom eligibility has been manufactured by the Fourth Circuit.[2]

Moreover, in excising the bargained-for language limiting plan liability, and thus simply ignoring this Court's opinion in *United Mine Workers Health and Retirement Funds v. Robinson*, 455 U.S. 562 (1982), the Fourth Circuit has established a destabilizing precedent, authorizing district judges to police for fairness the hard-fought compromises resulting from bargaining between management and labor. Such a result cannot be justified in the face of this Court's continuing and oft-expressed commitment to the protection of the results of collective bargaining.

In addition, the Court of Appeals' decision was predicated wholly on the panel's interpretation of language outside of the Plan document. This language, lifted from the 1984 NBCWA, is part of a general description of the combined benefits offered under four different multiemployer plans and a prototype single employer health benefits plan that each coal operator was obligated to adopt. The Fourth Circuit read this language as an undertaking to provide certain benefits for life. Even assuming, however, that employers such as Royal Coal obligated themselves to provide their employees with lifetime benefits (an assumption *Amicus Curiae* vigorously disputes), there is no indication in the contract that the obligation was to be funded through

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[2] As noted *supra* at p. 3, the contract currently being negotiated will include additional funding for the 1974 Benefit Plan to insure its liquidity through the term of this agreement. This, however, will require BCOA member companies to divert some of their limited resources to pay benefits beyond the contemplation of the bargaining parties. Moreover, unless the Fourth Circuit's mandate is reversed, the parties may have to revisit this issue in future bargaining if the negotiated contribution levels prove insufficient to fund the benefits of those retirees added to the Plan's rolls by that Court. The problems engendered by the Fourth Circuit's opinion will thus recur, regardless of how they are addressed in the current agreement.

the 1974 Benefit Plan unless all of the specific eligibility requirements of that Plan were met.

The Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461 ("ERISA"), requires that every employee benefit plan be established in writing, as a separate legal entity, and that it be administered by its fiduciaries in accordance with the written terms of that plan. As the Fourth Circuit admitted, the 1974 Benefit Plan Trustees did exactly this. Relying on general and ambiguous language in the contract, however, the Court of Appeals reached out to the 1974 Benefit Plan and determined that its assets could be used to pay for alleged promises made by other entities to individuals who were never intended to benefit from that Plan. In so doing, the court has required the Plan fiduciaries—who have followed the unambiguous terms of a lawful plan in limiting payments to intended beneficiaries—to jeopardize the security of those intended beneficiaries by paying benefits in a manner expressly prohibited by the governing documents. In the absence of wrongdoing, either by the 1974 Benefit Plan or its Trustees, federal policy cannot permit this result.

Finally, even assuming, *arguendo*, that *Robinson* does not control this case, and that some level of judicial review of the operation of collectively bargained eligibility provisions is appropriate, the Fourth Circuit's willingness to give *de novo* review to the eligibility decision made by the Trustees represents a total, and unexplained, departure from prior Fourth Circuit case law and from the unanimous view of the other Circuit Courts of Appeals. Without citation or exposition, the Fourth Circuit abandoned the "arbitrary and capricious" standard of review embraced in every other Circuit and, until now in the Fourth Circuit as well, and embarked on its own review of the language of the Plan, as well as extrinsic evidence, in adopting its own "reading of the terms of the agreements . . . ." App. at 3a. Accordingly, this Court should grant the requested Writ to answer the

question expressly left open in *Robinson*, *i.e.*, whether a federal court is authorized to review the eligibility interpretations of plan trustees, and if so, to determine the appropriate standard under which their actions should be reviewed. *Robinson*, 455 U.S. at 573, n. 12.

ARGUMENT

THE WRIT SHOULD BE GRANTED AND THE FOURTH CIRCUIT'S DECISION REVERSED TO PREVENT OTHER COURTS FROM RELYING THEREON IN MEASURING COLLECTIVELY BARGAINED COMPROMISES BY JUDICIALLY IMPOSED STANDARDS OF REASONABLENESS.

Through long and intensive bargaining in 1978 and 1981, BCOA and the UMWA arrived at eligibility language for the 1974 Benefit Plan which was acceptable to both parties but not entirely pleasing to either. The Fourth Circuit acknowledged that the resulting bargained-for language created "patent limitation[s]" on the liability of Petitioner to provide health benefits to retired miners. App. at 5a. Further, the Fourth Circuit acknowledged that the companies involved in this suit did not satisfy the contract's "no longer in business" eligibility threshold, *i.e.*, they did not meet "the literal provisions triggering the liability of the [Petitioner]." App. at 5a-6a. Accordingly, the Court of Appeals admitted that, in denying benefits to former employees of these companies, the Trustees did nothing more than "adhere[] to the literal terms of the agreement." *Id.*

The Fourth Circuit, however, was unwilling to "permit the [Petitioner] to escape liability by its strict adherence to the literal terms in the agreement." *Id.* The Court thought it was necessary to rewrite the contract to provide for an eventuality the parties "simply did not consider," specifically, the legal ramifications of *Royal Coal*. App. at 7a. Had the parties anticipated this "unforeseen" decision, the Court concluded, they would have agreed to a different eligibility standard, one resulting

in liability for Petitioner. *Id.*[3] Accordingly, it rewrote the "literal terms in the agreement," terms resulting from informed and intensive bargaining, and substituted a different eligibility requirement, one these companies *could* meet. *Id.* Such a reformation, the Court held, was consonant with what it found to be the parties' more generalized intention to create a seamless "safety net" for "orphaned" retirees. *Id.*

The Fourth Circuit's reformation of the parties' agreement is insupportable both factually and legally. The parties could not have been clearer when the eligibility standards were negotiated. The definition of "no longer in business" was necessarily strict and limited. The Plan was never intended or designed as an all-encompassing safety net and both the clear language of the documents and the UMWA's subsequent efforts in negotiations to broaden the eligibility standards are telling proof of the parties' original intent. The Court simply ignored this negotiating history while writing from the heart, not the contract.

The Fourth Circuit's disregard of the parties' bargain is inimical to the most basic precepts of our national labor policy, as repeatedly expressed by this Court. A federal court is not authorized to substitute its judgment for that embodied in the collectively bargained agreement of the parties. *See, e.g., Bowen v. United States Postal Service*, 459 U.S. 212, 241 (1983); *United Mine Workers Health & Retirement Funds v. Robinson*, 455 U.S. 562, 576 (1982); *Carbon Fuel Co. v. Mine Workers*,

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[3] The Court's speculation about what the bargaining parties might have negotiated under different circumstances cannot, under traditional notions of contract law, be used to justify the result reached below. It is well settled that "[i]t is not enough to justify reformation that the court is satisfied that the parties would have come to a certain agreement had they been aware of the actual facts." 13 *Williston on Contracts* § 1548 (3d ed. 1970). Thus, the Fourth Circuit's reformation cannot be supported by the panel's belief that different eligibility language would have been agreed to had the parties anticipated *Royal Coal*.

444 U.S. 212, 218-19 (1979); *H.K. Porter Co., Inc. v. NLRB*, 397 U.S. 99, 108 (1970).

This, in fact, is the central teaching of *Robinson*. There, the Circuit Court had determined that the bargained-for eligibility language in an ERISA-qualified plan resulted in "unreasonable" distinctions and "arbitrarily" denied benefits to certain individuals, in violation of Section 302(c) of the Labor Management Relations (Taft-Hartley) Act of 1947, 29 U.S.C. § 186(c). In reversing the Court of Appeals, this Court, in language of unmistakable clarity, unanimously held that "when neither the collective bargaining process nor its end product violates any command of Congress, a federal court has no authority to modify the substantive terms of a collective-bargaining contract." *Robinson*, 455 U.S. at 576.

Because *Robinson* directly controls this case, it is not surprising that it was extensively briefed and argued before the Fourth Circuit. That Court, however, failed to distinguish, or even mention, either *Robinson*, its ancestors,[4] or its progeny in resolving "not [to] permit" the implementation of the plain language of the agreement. *Amicus Curiae* respectfully submits that the Fourth Circuit's failure even to acknowledge the existence of *Robinson* and the Court's willingness to substitute its judgment for the language of the bargaining parties as to the appropriate preconditions for benefit eligibility make this case worthy of consideration on Certiorari. This Court should take this opportunity to strongly reaffirm the principles articulated in *H.K. Porter* and *Robinson* and to police the implementation of its mandates by the lower federal courts.

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[4] *See, e.g., Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212 (1979); *H.K. Porter Co., Inc. v. NLRB*, 397 U.S. 99 (1970); *NLRB v. Insurance Agents*, 361 U.S. 477 (1960); *Teamsters v. Oliver*, 358 U.S. 283 (1959); *NLRB v. American National Ins. Co.*, 343 U.S. 395 (1952).

THE WRIT SHOULD BE GRANTED BECAUSE THE FOURTH CIRCUIT'S OPINION DOES VIOLENCE TO BOTH THE PLAIN LANGUAGE AND THE CONGRESSIONAL INTENT UNDERLYING THE EMPLOYEE RETIREMENT INCOME SECURITY ACT.

As this Court has recognized, the duty of a trustee of an ERISA-qualified plan "is to provide specific benefits to those who are entitled to them in accordance with the terms of a plan." *Central States, Southeast and Southwest Areas Pension Fund v. Central Transp. Inc.*, 472 U.S. 559, 577 (1985). As noted *supra*, under the language of the 1974 Benefit Plan document, the individual Respondents in this case are not entitled to benefits because, as the Fourth Circuit explained, "the literal provisions triggering the liability of the [Petitioner] . . . are not satisfied." App. at 5a. Thus, in denying eligibility to the individual respondents, the Trustees did no more than implement the language of their Plan.

This, in fact, is what ERISA demands. Section 402 of ERISA provides that "[e]very employee benefit plan shall be established and maintained pursuant to a written instrument." 29 U.S.C. § 1102. Section 403 requires that all plan assets be held in trust, and shall be held for the exclusive purposes of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses. 29 U.S.C. § 1103(a), (c)(1). Section 404(a)(1) requires the trustees, as fiduciaries, to discharge their duties "solely in the interest of participants and beneficiaries." 29 U.S.C. § 1104(a)(1). Section 404(a)(1)(D) further mandates that the trustees act "in accordance with the documents and instruments governing the plan . . . ." 29 U.S.C. § 1104(a)(1)(D). Indeed, the whole of ERISA's statutory scheme is infused with the basic proposition that a plan trustee's every action must be guided solely by the language of lawful plan documents and must be for the benefit of stated participants and beneficiaries.

In this case, the Fourth Circuit has mandated that the Trustees eschew the "patent limitations" of the plan document and embrace instead more general and ambiguous "expressions of intent" found outside that document in the collective bargaining agreement, expressions relating to parties other than the intended beneficiaries of the Plan.[5] Such a command cannot be reconciled with the plain language of ERISA, and there is no rational policy justification for permitting such interference with a lawfully maintained employee benefit plan. Indeed, it must be emphasized that the 1974 Benefit Plan itself is not a party to the collective bargaining agreement, and is simply one of many employee benefit plans referred to in that document. The 1974 Benefit Plan contains no unkept promises to beneficiaries—indeed, the Petitioner has continued, without interruption, to provide benefits to all individuals who have met its negotiated eligibility criteria. The Plan has not terminated the entitlement to benefits of any of its beneficiaries, but instead has continued (during its negotiated existence) to provide benefits for the lifetimes of qualified individuals.

Through the 1974 Benefit Plan, the individual coal operators signatory to the NBCWA agreed to fund collectively the benefit obligations of other coal operators in certain very clearly defined and narrowly drawn circum-

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[5] It must be noted that even the language of the "general description" of the collective bargaining agreement, which was relied upon by the Court of Appeals, cannot justify the imposition of liability on the 1974 Benefit Plan. First, the language appears by its terms only to summarize generally the benefits that were agreed to by the parties signatory to the contract, but does not anywhere state that the 1974 Benefit Plan will be the guarantor of those benefits. Second, the general description itself states that it "is intended merely to highlight certain information . . . and is qualified in its entirety by, and subject to the more detailed information contained in the Plans and Trusts . . . . *The specific provisions of the Plans will govern in the event of any inconsistencies between the general description and the Plans.*" App. at 93a (Emphasis added). The Fourth Circuit dealt with this language in the same way it dealt with *Robinson*—by simply ignoring it.

stances. Those circumstances define the contours of the 1974 Benefit Plan's eligibility requirements. Whatever the merits of the Fourth Circuit's conclusion with respect to the liability of employers that have left the coal business, it is patently clear that the remaining coal operators never agreed, and hence the 1974 Benefit Plan is not liable, to fund the supposedly continuing obligation of companies such as Royal Coal to pay health benefits to retired miners.

By imposing that obligation on the 1974 Benefit Plan, the Fourth Circuit has rested on the Plan the remedial burden of an undertaking presumably made by certain parties to the collective bargaining agreement—*i.e.*, Royal Coal Co. (and other similarly situated companies) and the UMWA. If the 1974 Benefit Plan is not relieved of this burden, the cost will, in reality, be borne by the true beneficiaries of the Plan, for whom only a limited amount of benefit dollars is available. This result will undermine all of the protections these beneficiaries previously enjoyed under ERISA. Eligibility rules that were carefully crafted to protect those truly intended to be beneficiaries will now be discarded, and money that was previously held in trust for these beneficiaries will now be used to provide for others. This Court should grant the requested Writ to establish a federal policy preserving the sanctity of lawfully established, ERISA-covered employee benefit plans, and protecting them from the imposition of liabilities for asserted promises made by other parties.

THE WRIT SHOULD BE GRANTED SO THAT THIS COURT CAN EMBRACE OR REJECT THE STANDARD OF REVIEW ADOPTED BY ELEVEN CIRCUIT COURTS OF APPEALS BUT SHUNNED BY THE FOURTH CIRCUIT IN THIS CASE.

In *NLRB v. Amax Coal Co.*, 453 U.S. 322, 330 (1981), and again in *Robinson*, 455 U.S. at 562 n.12, this Court declined to determine "whether federal courts sitting as courts of equity are authorized to enforce" the tradi-

tional fiduciary duties incumbent on trustees of Taft-Hartley plans such as Petitioner. In the absence of guidance from this Court, the Circuit Courts of Appeals have determined that review is authorized, but that the trustees' interpretations of trust language must be upheld unless they are "arbitrary and capricious." Until the Fourth Circuit's decision below, the Circuits had unanimously adopted this view.[6] Indeed, in a subsequent opinion, the Seventh Circuit has suggested, in *dictum*, that it might be appropriate to accord Taft-Hartley trustees even greater deference, overturning their decisions only when it can be said with certainty that they failed utterly to interpret the agreement they were appointed to interpret. *Van Boxel v. Journal Company Employees' Pension Trust*, —— F.2d ——, 1987 WL 26050 at p. 4 (7th Cir. Dec. 26, 1987).

As evidenced by its opinion in this case, however, the Fourth Circuit has now apparently abandoned the deference embodied in the arbitrary and capricious standard in favor of *de novo* review. Although the applica-

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[6] *See, e.g., First: Palino v. Casey*, 664 F.2d 854 (1st Cir. 1981); *Second: Miles v. New York State Teamsters Conf.*, 698 F.2d 593 (2d Cir.), *cert. denied*, 464 U.S. 829 (1983); *Third: Gaines v. Amalgamated Ins. Fund*, 753 F.2d 288 (3d Cir. 1985); *Fourth: Whip v. Seafarers Vacation Plan*, 832 F.2d 853 (4th Cir. 1987); *Fifth: Bayles v. Central States, Southeast and Southwest Areas Pension Fund*, 602 F.2d 97 (5th Cir. 1979); *Sixth: Central States, Southeast and Southwest Areas Pension Fund v. Central Transp. Inc.*, 698 F.2d 802 (6th Cir. 1983), *rev'd on other grounds*, 472 U.S. 559 (1985); *Seventh: Wardle v. Central States, Southeast and Southwest Pension Fund*, 627 F.2d 820 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981); *Eighth: Short v. Central States, Southeast and Southwest Areas Pension Fund*, 729 F.2d 567 (8th Cir. 1984); *Ninth: Aitken v. I.P. & G.C.U.-Employer Retirement Fund*, 604 F.2d 1261 (9th Cir. 1979) (Kennedy, J.); *Tenth: Carter v. Central States, Southeast and Southwest Areas Pension Fund*, 656 F.2d 575 (10th Cir. 1981); *Eleventh: Deak v. Masters, Mates, & Pilots Pension Plan*, 821 F.2d 572 (11th Cir. 1987), *cert. denied*, —— U.S. ——, 56 U.S.L.W. 3360 (Jan. 11, 1988); *D.C.: Nichols v. Board of Trustees of the Asbestos Workers Local 24 Pension Plan*, —— F.2d ——, 1987 WL 21264 (D.C. Cir. Sept. 24, 1987).

bility of the arbitrary and capricious standard to this dispute was extensively briefed and argued below by both parties, the Court of Appeals made no reference to this or any other standard of review in its opinion. Instead, the panel simply determined that by implementing the Plan's "literal" language, the Trustees had somehow misinterpreted the Plan, and the Court then proceeded to substitute its own interpretation.

As noted above, the Fourth Circuit's implied rejection of the arbitrary and capricious standard of review places it in conflict with every one of the remaining Circuit Courts.[7] Even assuming, however, that the Fourth Circuit's opinion can be read as somehow utilizing, if not articulating, the arbitrary and capricious standard, this Court should grant the Writ to resolve a direct conflict between the Fourth Circuit's opinion in this case and the opinions of other Circuit Courts relating to the application of that standard.

In *District 2, UMWA v. Helen Mining Co.*, 762 F.2d 1155 (3d Cir.), *cert. denied*, 474 U.S. 1006 (1985), the Third Circuit held that, as a matter of law, trustees do not act in an arbitrary and capricious manner when they implement the literal eligibility terms of their plan. The court held that "[w]hen the trustees have consistently and literally followed an unambiguous benefit eligibility

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[7] It should be noted that in the context of non-Taft-Hartley plans, several courts have either expressed reservations about, or actually rejected the arbitrary and capricious standard. *See Van Boxel v. Journal Company Employees' Pension Trust*, —— F.2d ——, 1987 WL 26050 (7th Cir. Dec. 26, 1987) (questioning standard when trustees are not neutral or jointly appointed); *Bruch v. Firestone Tire & Rubber Co.*, 828 F.2d 134 (3d Cir. 1987) (non-Taft-Hartley plan; rejecting standard where administrator benefits from denial of eligibility); *Varholz v. Doe*, 820 F.2d 809 (6th Cir. 1987) (expressing skepticism about application of standard to non-Taft-Hartley plans). To the extent these cases may prompt a reevaluation of the arbitrary and capricious standard in the context of jointly-trusteed plans, the instability they engender reinforces the need for this Court to grant review and resolve the brewing conflict.

requirement that was bargained for and that was set forth in an employee benefit plan, that action cannot be called arbitrary and capricious by a court unless enforcement would violate federal law or policy." *Id.* at 1160. Since the Fourth Circuit acknowledged that the "patent" and "literal" terms of the plan were consistently implemented by the trustees and expressly did not find any violation of federal law, its decision cannot be harmonized with that of the Third Circuit in *Helen Mining.*

Similarly, the Seventh Circuit has recognized that fealty to the literal eligibility rules of a plan by its trustees cannot be arbitrary and capricious, even when the results can be characterized as unfair or illogical. In *Cummings by Techmeir v. Briggs & Stratton Retirement Plan,* 797 F.2d 383 (7th Cir.), *cert. denied,* 107 S.Ct. 648 (1986), the plan trustees had denied eligibility to the daughter of a deceased plan participant. Although the participant had, at the time of his divorce, contracted to name his daughter as his beneficiary under the plan, he died without executing the necessary forms entitling the daughter to receive benefits. Acknowledging that the trustees had merely implemented the literal terms of the plan in denying the daughter benefits, the district court imposed a constructive trust in her favor, claming that any other result would be "unconscionable, unjust, or unfair." *See, Cummings by Techmeir,* 606 F. Supp. 659, 664 (W.D. Wisc. 1985).

The Seventh Circuit reversed, holding that the trustees "had clearly complied with both the written terms of the Plan and their fiduciary duties." 797 F.2d at 388. This conclusion, the Court held, "should have ended the mat ter." *Id.* In stark contrast, the Fourth Circuit acknowledged in this case that the Trustees had complied with the terms of their Plan and performed their fiduciary duties. The Court, however, insisted on reviewing the net results of the Trustees' action. Such an inquiry is patently inconsistent with the rule enunciated in *Cummings by Techmeir.*

Accordingly, *Amicus Curiae* urges this Court to grant the Writ to resolve these irreconcilable differences between the Fourth Circuit's treatment of this case below and the contrary view expressed by other Circuits addressing substantially identical questions.

CONCLUSION

Even if action by this Court were not necessary to resolve a conflict between the Fourth Circuit's decision and the decisions of other Circuit Courts of Appeals, the confusion that will be generated by the Fourth Circuit's action in this case demonstrates why this important area of federal law should be settled by this Court. As noted herein, the Fourth Circuit has rejected the interpretation of a Board of Trustees of a Taft-Hartley-qualified trust relating to collectively bargained benefit eligibility rules, without ever addressing either this Court's analysis in *Robinson* or the arbitrary and capricious standard of review adopted by every other Circuit Court of Appeals to address trustee actions. By refusing to follow, or even acknowledge, two established lines of precedent applicable to cases of this type, the Fourth Circuit has created new uncertainty as to the enforceability of negotiated eligibility rules for Taft-Hartley plans, and as to the standard by which trustee interpretations and implementation of those rules will be judged. This Court should grant the Writ to remove that uncertainty.

For the foregoing reasons, *Amicus Curiae*, Bituminous Coal Operators Association, urges that the petition of the 1974 Benefit Plan be granted.

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